

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 ESTATE OF REX VANCE WILSON by
 4 administrator PETRA WILSON, et al.,

5 Plaintiffs

6 v.

7 LAS VEGAS METROPOLITAN POLICE
 8 DEPARTMENT, et al.,

9 Defendants

Case No.: 2:18-cv-01702-APG-VCF

**Order Granting in Part Defendants'
 Motion for Summary Judgment and
 Ordering New Dispositive Motion Deadline**

[ECF No. 22]

10 Rex Vance Wilson was fatally shot by police officers following a 30-minute, high-speed
 11 car chase. His estate, widow, and children filed this lawsuit against Las Vegas Metropolitan
 12 Police Department (LVMPD), Sheriff Joseph Lombardo, and LVMPD officers John Squeo,
 13 Travis Swartz, Christopher Gowens, and Eric Lindberg. They assert multiple claims under both
 14 federal and state law. The defendants move for summary judgment on all claims. I grant the
 15 defendants' motion on all claims except the negligence and negligent infliction of emotional
 16 distress claims against defendant Squeo. But I will allow the parties to file additional motions on
 17 those claims.

18 **I. BACKGROUND**

19 On October 12, 2016, Rex Wilson was driving a stolen car and he fled when an officer
 20 attempted to pull him over. ECF No. 22-5 at 9. In addition to driving a stolen car, Wilson was
 21 identified as the suspect in a string of armed robberies. ECF Nos. 22-6 at 25; 22-8 at 25; 22-9 at
 22 18. Several LVMPD officers in multiple cars pursued him. ECF No. 22-5 at 9-15. As relevant
 23 here, Officers Gowens and Squeo followed Wilson in one police car, while Officers Swartz and

1 Lindberg followed him in two separate police cars. *Id.* at 14-15. The pursuit lasted for
2 approximately 30 minutes, reaching speeds over 100 miles per hour and eventually leading onto
3 Interstate 215. *Id.* at 61; *see also* ECF Nos. 22-10 at 20; 22-12, all officers' BWCs.¹

4 An officer attempted a precision intervention technique (PIT) to end Wilson's flight, but
5 was unsuccessful. ECF No. 22-5 at 9. Once the pursuit reached the interstate, LVMPD officers
6 again attempted to end the chase by laying down stop sticks. ECF No. 22-10 at 15. Wilson
7 eventually passed over a stop sticks, which damaged one of his tires. *Id.* Wilson came to a stop,
8 prompting officers to get out of their cars and draw their firearms. ECF No. 22-12, Squeo BWC
9 at 21:50. But Wilson then began driving away. *Id.* at 22:15.

10 Because of the damage to Wilson's tire, he was driving on one of the rims and at a much
11 slower speed than before. *Id.* at 22:20-35; ECF No. 22-9 at 20. Officers estimated he was
12 travelling between 20 to 40 miles per hour at this point. ECF Nos. 22-6 at 28, 30; 22-9 at 21.
13 There were no pedestrians or civilian traffic nearby. *Id.* Someone suggested over the police
14 radio that officers should stop Wilson before he exited the freeway. ECF No. 22-12, Squeo BWC
15 at 22:33.

16 Noting that Wilson's car was traveling under 40 miles per hour, Gowens urged Squeo
17 several times to PIT Wilson's car. ECF No. 22-12, Squeo BWC at 22:30-50. Squeo attempted a
18 PIT and bumped Wilson's car, causing it to spin around into the middle of the freeway. *Id.* at
19 22:42-50. Officers then conducted a second PIT that knocked Wilson into the median. ECF Nos.
20 22-6 at 30-31; 22-8 at 26.

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¹ BWC refers to an officer's body worn camera. Citations to the videos identify which officer's
BWC is being cited and approximate times on the video.

1 Once in the median, Wilson's car came to a stop and the front of Squeo and Gowens' car
2 bumped into Wilson's driver side door, blocking it from opening. *Id.*; ECF No. 22-12, Squeo
3 BWC at 22:50-23:00. At the same time, the front of Lindberg's car bumped the front of
4 Wilson's car, blocking it from moving forward, and Swartz pulled up next to Wilson's passenger
5 side door. *Id.* at 23:00; ECF Nos. 22-8 at 26; 22-12, Lindberg BWC at 23:15. The officers exited
6 their cars with their weapons drawn, and within seconds, all four officers fired multiple shots
7 into the driver's side of Wilson's car. ECF No. 22-12 Squeo BWC at 23:00-10; Swartz BWC at
8 22:43; Lindberg BWC at 23:20. Squeo testified that he began shooting because Wilson pointed a
9 firearm directly at him. ECF No. 22-6 at 33-34. Gowens testified he saw Wilson turn and point a
10 firearm. ECF No. 22-10 at 18-19. Swartz testified that he fired because he saw Wilson point a
11 semiautomatic handgun in Squeo's direction. ECF No. 22-8 at 28. Lindberg testified that he saw
12 Wilson with a firearm "punching out" of the driver's side window. ECF No. 22-9 at 22.

13 "Shots fired" was called over the police radio at 11:47 p.m. ECF No. 22-5 at 64. Once
14 the firing ceased, officers attempted to communicate with Wilson, demanding he show his hands
15 and surrender. *Id.* at 51, 54, 57. Unsure of whether he was still alive, the officers waited for a
16 ballistic shield to arrive before approaching the car. *Id.* at 48-49, 59. A call for medical
17 assistance was made at 12:02 a.m. *Id.* at 64.

18 No firearms were recovered from Wilson's car. Instead, once officers approached his
19 vehicle with a ballistic shield, they found a spray nozzle with black tape in his hand. *Id.* at 7, 32,
20 49. Wilson was no longer alive at this point. *Id.* at 48. Officers found the word "Sorry" written
21 in blood on the screen of his car's navigation system. *Id.* at 32.

22 Wilson's estate, widow, and children filed this lawsuit asserting claims under 42 U.S.C.
23 § 1983 for (1) excessive force against Gowens, Squeo, Lindberg, and Swartz; (2) deprivation of

1 familial relationship with Wilson without due process of law against all defendants; and
2 (3) municipal liability based on unconstitutional customs and practices against LVMPD and
3 Sheriff Lombardo; (4) assault and battery under Nevada law against Gowens, Squeo, Lindberg,
4 and Swartz; (5) negligent supervision and training against LVMPD and Lombardo; and
5 (6) negligence, wrongful death, and negligent infliction of emotional distress against all
6 defendants. The defendants move for summary judgment on all claims.

7 **II. ANALYSIS**

8 Summary judgment is appropriate if “there is no genuine dispute as to any material fact
9 and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is
10 material if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty*
11 *Lobby, Inc.*, 477 U.S. 242, 248 (1986). An issue is genuine if “the evidence is such that a
12 reasonable jury could return a verdict for the nonmoving party.” *Id.*

13 The party seeking summary judgment bears the initial burden of informing the court of
14 the basis for its motion and identifying those portions of the record that demonstrate the absence
15 of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The
16 burden then shifts to the non-moving party to set forth specific facts demonstrating there is a
17 genuine issue of material fact for trial. *Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 531
18 (9th Cir. 2000). I view the evidence and reasonable inferences in the light most favorable to the
19 nonmoving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir.
20 2008).

21 **A. Section 1983 Claims**

22 To establish liability under § 1983, the plaintiffs must show (1) the deprivation of a right
23 secured by the Constitution and laws of the United States and (2) that the alleged deprivation was

1 committed by a person acting under color of state law. *Broam v. Bogan*, 320 F.3d 1023, 1028
2 (9th Cir. 2003). The defendants do not dispute that they acted under color of law. The only
3 issues that remain are whether they violated a constitutional right and whether they are entitled to
4 qualified immunity.

5 “Qualified immunity attaches when an official’s conduct does not violate clearly
6 established statutory or constitutional rights of which a reasonable person would have
7 known.” *Kisela v. Hughes*, 138 S. Ct. 1148, 1152 (2018) (quoting *White v. Pauly*, 137 S. Ct. 548,
8 551 (2017)). “Because the focus is on whether the officer had fair notice that her conduct was
9 unlawful, reasonableness is judged against the backdrop of the law at the time of the
10 conduct.” *Id.* (quotation omitted). Even if the defendant makes a mistake of law or acts based on
11 a mistake of fact, he may be entitled to qualified immunity. *Pearson v. Callahan*, 555 U.S. 223,
12 231 (2009).

13 I determine whether the defendant officers are entitled to qualified immunity by asking
14 (1) whether the facts viewed in the light most favorable to the plaintiffs establish that the officers
15 violated a constitutional right and (2) “if so, whether that right was clearly established at the time
16 of the event.” *Rosenbaum v. Washoe Cnty.*, 663 F.3d 1071, 1075 (9th Cir. 2011). I may address
17 these two prongs in any order and, depending on the conclusion I reach, I need not address both
18 prongs. *Pearson*, 555 U.S. at 236-37.

19 The “clearly established” prong determines whether the officer had a reasonable warning
20 that the conduct at issue violated that constitutional right. *See Brosseau v. Haugen*, 543 U.S. 194,
21 199 (2004) (per curiam). I must look to case law on the allegedly violated right. *Boyd v. Benton*
22 *Cnty.*, 374 F.3d 773, 781 (9th Cir. 2004). A case directly on point is not necessary, but “existing
23 precedent must have placed the statutory or constitutional question beyond debate.” *Mattos v.*

1 *Agarano*, 661 F.3d 433, 442 (9th Cir. 2011) (en banc) (quotation omitted). I must not define
 2 clearly established law at “a high level of generality.” *Mullenix v. Luna*, 577 U.S. 7, 12 (2015)
 3 (quotation omitted). “The dispositive question is whether the violative nature of *particular*
 4 conduct is clearly established.” *Id.* (quotation omitted).

5 1. Excessive Force

6 Excessive force in the course of an arrest, including deadly force, is analyzed under “the
 7 Fourth Amendment’s ‘objective reasonableness’ standard.” *Scott v. Harris*, 550 U.S. 372, 381
 8 (2007) (quoting *Graham v. Connor*, 490 U.S. 386, 388 (1989)). To determine whether the
 9 officers’ actions were objectively reasonable in light of the circumstances confronting them, I
 10 “balance the nature and quality of the intrusion on the individual’s Fourth Amendment interests
 11 against the importance of the governmental interests alleged to justify the intrusion.” *Id.* at 383
 12 (quotation omitted). This generally entails a three-step analysis. *Miller v. Clark Cnty.*, 340 F.3d
 13 959, 964 (9th Cir. 2003). First, I assess “the gravity of the particular intrusion on Fourth
 14 Amendment interests by evaluating the type and amount of force inflicted.” *Id.* Second, I assess
 15 “the importance of the government interests at stake by evaluating: (1) the severity of the crime
 16 at issue, (2) whether the suspect posed an immediate threat to the safety of the officers or others,
 17 and (3) whether the suspect was actively resisting arrest or attempting to evade arrest by flight.”
 18 *Id.* Third, I weigh the gravity of the intrusion against the government’s interest to determine
 19 whether the amount of force was constitutionally reasonable. *Id.*

20 Deadly force means “force that creates a substantial risk of causing death or serious
 21 bodily injury.” *Smith v. City of Hemet*, 394 F.3d 689, 693 (9th Cir. 2005) (en banc). Deadly
 22 force is reasonable “only if the officer has probable cause to believe that the suspect poses a
 23 significant threat of death or serious physical injury to the officer or others.” *Gonzalez v. City of*

1 *Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014) (en banc) (quotation omitted). Likewise, an officer
2 “may use deadly force to apprehend a fleeing suspect only if the officer has probable cause to
3 believe that the suspect poses a threat of serious physical harm, either to the officer or to others.”
4 *Orn v. City of Tacoma*, 949 F.3d 1167, 1174 (9th Cir. 2020) (quoting *Tennessee v. Garner*, 471
5 U.S. 1, 11 (1985)). “A suspect may pose such a threat if there is probable cause to believe that
6 he has committed a crime involving the infliction or threatened infliction of serious physical
7 harm, or if the suspect threatens the officer or others with a weapon capable of inflicting such
8 harm.” *Id.* (quotation omitted).

9 I consider all relevant objective “facts and circumstances confronting [the officers],
10 without regard to their underlying intent or motivation” and “from the perspective of a
11 reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Monzon v. City*
12 *of Murrieta*, 978 F.3d 1150, 1157 (9th Cir. Oct. 27, 2020) (quotation omitted). And I must
13 consider the fact that “police officers are often forced to make split-second judgments—in
14 circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is
15 necessary in a particular situation.” *Drummond ex rel. Drummond v. City of Anaheim*, 343 F.3d
16 1052, 1058 (9th Cir. 2003) (quotation omitted).

17 *a. Use of Deadly Force by Firearm*

18 Gowens, Squeo, Swartz, and Lindberg move for summary judgment on the plaintiffs’
19 claim that they violated Wilson’s Fourth Amendment right by shooting and killing him. The
20 officers contend that the shooting was a reasonable use of force under the circumstances and that
21 they are entitled to qualified immunity. The plaintiffs do not respond to the defendants’
22 argument that the shooting was justified.

1 By shooting Wilson multiple times and killing him, the officers obviously used deadly
2 force, the “greatest degree of force possible.” *Tan Lam v. City of Los Banos*, 976 F.3d 986, 998
3 (9th Cir. 2020). But the shooting was reasonable as a matter of law. The plaintiffs do not
4 dispute the officers’ testimony or the video evidence that Wilson pointed an object that appeared
5 to be a handgun in Officer Squeo’s direction. They also do not dispute that officers found a
6 spray nozzle fashioned to look like a handgun in Wilson’s hand. The officers thus had probable
7 cause to believe that Wilson posed a significant threat of death or serious physical injury to
8 Squeo and the other officers. Although the officers were mistaken about what was in Wilson’s
9 hand, there is no evidence that their mistake was anything but reasonable under the
10 circumstances. Because no genuine dispute remains that Wilson pointed what appeared to be a
11 firearm at defendant Squeo, and in light of the totality of the circumstances facing the officers,
12 the defendants’ use of deadly force was reasonable.

13 Additionally, the plaintiffs have not identified any law that would have adequately put
14 the officers on notice that using deadly force when Wilson pointed what appeared to be a firearm
15 at an officer following a high speed chase would violate Wilson’s Fourth Amendment rights.
16 The defendants are entitled to qualified immunity.

17 Because the defendants did not violate Wilson’s Fourth Amendment rights and are
18 entitled to qualified immunity, I grant summary judgment in favor of Gowens, Squeo, Swartz,
19 and Lindberg on the plaintiffs’ Fourth Amendment excessive force claim based on the shooting.
20 I also grant the defendants summary judgment on the plaintiffs’ Fourteenth Amendment due
21 process claim for loss of familial association as to this use of force because that claim is
22 governed by a higher standard. *Moreland v. Las Vegas Metro. Police Dep’t*, 159 F.3d 365, 371
23 n.4 (9th Cir. 1998), *as amended* (Nov. 24, 1998).

1 *b. Use of Force by Vehicle*

2 In response to the defendants' summary judgment motion, the plaintiffs argue that the
3 defendants used excessive force when Squeo "rammed" Wilson's car. The plaintiffs contend
4 that Gowens urged Squeo to "ram" Wilson, that Squeo did so, that "ramming" is deadly force
5 under LVMPD policy, and that deadly force was unreasonable when Wilson was driving slowly
6 on the car's rim in an area where there were no pedestrians or civilian traffic.² The defendants
7 respond that regardless of what Gowens said, Squeo did not "ram" Wilson or otherwise use
8 deadly force when he bumped Wilson's car. They also argue that no clearly established law put
9 Squeo on notice that such conduct was prohibited under the circumstances.

10 Even viewing the evidence in the light most favorable to the plaintiffs, no reasonable jury
11 viewing the bodycam videos could conclude that Squeo's contact with Wilson's car constituted
12 deadly force. Both impacts were relatively minor bumps at low speeds. The plaintiffs have
13 offered no evidence that either impact created a substantial risk of causing death or serious
14 bodily injury. The plaintiffs rely on LVMPD's policy that characterizes "ramming" as deadly
15 force. ECF No. 22-17 at 30. But a police department's policies or training materials are not
16 dispositive on the constitutional level of reasonable force, though I may take them into
17 consideration. *Drummond*, 343 F.3d at 1059. Moreover, under LVMPD's policy, a PIT under

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19 ² Gowens, Squeo, Swartz, and Lindberg contend that the plaintiffs did not plead this theory in the
20 complaint. Federal Rule of Civil Procedure 8(a)(2) requires the plaintiff to "give the defendant
21 fair notice of what the . . . claim is and the grounds upon which it rests." *Bell A. Corp. v.*
22 *Twombly*, 550 U.S. 544, 555 (2007). The complaint's factual allegations refer to Gowens urging
23 Squeo to ram Wilson and state that Squeo repeatedly rammed Wilson's car. ECF No. 1 at 7, 9-
10. For the Fourth Amendment claim, the complaint incorporates the factual allegations but then
states that these officers "used unreasonable and excessive force when they shot and killed"
Wilson. ECF No. 1 at 11. The plaintiffs did not clarify the basis of their excessive force claim in
their responses to interrogatories. ECF No. 28 at 18-29. But the ramming issue was brought up
in the officers' depositions. *See, e.g.*, ECF No. 22-6 at 22-23. Because the parties addressed this
issue in their response and reply briefs, I will analyze the claim.

1 forty miles per hour is not a use of deadly force, nor are several other vehicle contacts used to
2 end police pursuits. ECF No. 22-17 at 29-30. Given the low speed at the time of the contacts and
3 the minor nature of the bumps as shown on the bodycam video, no reasonable jury could
4 conclude that the amount of force used was deadly.

5 Nor could a reasonable jury find that the use of force was unreasonable under the totality
6 of the circumstances from the perspective of the officers. There were significant governmental
7 interests at stake. The police had probable cause to believe that Wilson had committed a series
8 of armed robberies and was driving a car that he stole at gunpoint. The video evidence supports
9 the officers' conclusion. ECF Nos. 22-4 (videos of armed robberies); 22-7 (video of carjacking).
10 The plaintiffs do not contest that Wilson committed the robberies or the carjacking. He led
11 officers on a 30-minute, high-speed chase during which he twice feigned stopping only to flee
12 again. Given the violent nature of Wilson's prior offenses, the officers had an interest in
13 apprehending him before he might be able to get off the interstate and into a residential area.
14 And given that Wilson had pretended to stop only moments before, his slow speed did not ensure
15 he was going to surrender without further flight. Weighing those interests against the relatively
16 minor intrusion of the low-speed impacts, Squeo's use of his police car to end Wilson's flight
17 was not an unreasonable use of force.

18 Even if a reasonable jury could find the use of force was unreasonable, the officers are
19 entitled to qualified immunity. The plaintiffs have not identified clearly established law that
20 would have put the officers on notice that making low-speed contacts to end a 30-minute police
21 pursuit under these circumstances would amount to unreasonable deadly force. The plaintiffs
22 identify cases that delineate certain circumstances where it becomes impermissible to use deadly
23 force, but none of them is sufficiently similar to the circumstances in this case to have put the

1 officers on notice that their conduct was unlawful. *See Wilkinson v. Torres*, 610 F.3d 546, 550
2 (9th Cir. 2010) (holding that deadly force is acceptable when an officer is on foot and in the path
3 of a suspect's accelerating vehicle); *Gonzalez*, 747 F.3d at 796-97 (holding that a reasonable jury
4 could find that shooting the driver in the head was unreasonable if the jury concluded the vehicle
5 was not moving at a high rate of speed and thus did not pose a threat of death or serious bodily
6 injury to the officers or others). The cited cases involve the question whether it is reasonable for
7 an officer to shoot a fleeing driver. But here, no reasonable jury could conclude that Squeo's use
8 of force rose to that level. Moreover, the officers may have been reasonably mistaken about the
9 level of force being used, based on their conversation about how slow Wilson was traveling
10 before Squeo bumped Wilson's car. And the plaintiffs have not pointed to clearly established
11 law that low-speed impacts during a police chase of a suspected armed robber are unreasonable.

12 Accordingly, the officers are entitled to summary judgment on the plaintiffs' claim that
13 they used excessive vehicular force against Wilson in violation of his Fourth Amendment right.
14 And because the Fourteenth Amendment demands a higher standard than unreasonableness, the
15 plaintiffs' Fourteenth Amendment due process claim for loss of familial association as to this
16 claim fails as well. *Moreland*, 159 F.3d at 371 n.4.

17 2. Denial of Medical Care

18 In response to the defendants' motion, the plaintiffs argue that their Fourteenth
19 Amendment familial relationship claim survives summary judgment because Gowens, Swartz,
20 Lindberg, and Squeo failed to provide Wilson with prompt medical care. The defendants
21 contend that they are entitled to summary judgment because Gowens, Squeo, Swartz, and
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1 Lindberg were not in control of the post-shooting scene, and because the plaintiffs did not
2 provide evidence that Wilson would have survived had quicker medical care been provided.³

3 “[S]uspects have a Fourth Amendment right to ‘objectively reasonable post-arrest
4 [medical] care’ until the end of the seizure.” *Est. of Cornejo ex rel. Solis v. City of Los Angeles*,
5 618 Fed. App’x 917, 920 (9th Cir. 2015) (quoting *Tatum v. City & Cnty. of San Francisco*, 441
6 F.3d 1090, 1099 (9th Cir. 2006)). “This means that officers must ‘seek the necessary medical
7 attention for a detainee when he or she has been injured while being apprehended by either
8 promptly summoning the necessary medical help or by taking the injured detainee to a
9 hospital.’” *Id.* (quoting *Maddox v. City of Los Angeles*, 792 F.2d 1408, 1415 (9th Cir. 1986)).
10 Thus, a police officer who promptly summons the necessary medical assistance has acted
11 reasonably for purposes of the Fourth Amendment. *Tatum*, 441 F.3d at 1099.

12 Because the plaintiffs assert this as part of their Fourteenth Amendment familial
13 relationships claim, the plaintiffs also must show that the officers’ conduct shocks the
14 conscience. *Porter v. Osborn*, 546 F.3d 1131, 1137 (9th Cir. 2008). I need not decide whether
15 the test for the officers’ culpability under the “shocks the conscience” standard is deliberate
16 indifference or purpose to harm unrelated to any legitimate law enforcement objective because
17 under either test, the plaintiffs’ claim fails. *See id.* at 1137-40. But I note that generally officers
18 involved in a high-speed car chase are not liable absent a purpose to harm. *See Cnty. of*
19 *Sacramento v. Lewis*, 523 U.S. 833, 854 (1998).

21 ³ The defendants contend that the plaintiffs did not plead this claim in their complaint. The
22 complaint contains facts about the time lapse between the shots fired and the call for medical aid.
23 ECF No. 1 at 10. But it is not clear from any other allegations or claims that the plaintiffs
intended to assert a Fourth Amendment denial of medical care claim on Wilson’s behalf or as an
aspect of the Fourteenth Amendment loss of familial relationships claim. Because the parties
addressed this claim in their response and reply briefs, I will address it.

1 The plaintiffs state in the complaint and in their response that Sergeant Christopher
2 Halbert oversaw the post-shooting scene and that Halbert instructed Gowens, Squeo, Swartz, and
3 Lindberg to stand back and wait for a ballistic shield to arrive. ECF Nos. 1 at 10; 27 at 5. But
4 Sergeant Halbert is not named as a party in this suit and the plaintiffs do not explain how
5 Gowens, Squeo, Swartz, and Lindberg may be held liable for Halbert's actions or omissions.
6 *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("Because vicarious liability is inapplicable to . . .
7 § 1983 suits, a plaintiff must [establish] that each Government-official defendant, through the
8 official's own individual actions, has violated the Constitution.").

9 Further, the officers taking the time to ensure that Wilson was no longer a threat before
10 approaching him does not shock the conscience under the Fourteenth Amendment. *See Estate of*
11 *Martinez v. City of Federal Way*, 105 Fed. App'x 897, 899 (9th Cir. 2004) (holding that officers
12 did not act with deliberate indifference as to the necessity to promptly summon medical care by
13 first ensuring that the scene was safe). Moreover, the plaintiffs do not identify caselaw that
14 would have put the officers on notice that they needed to summon medical attention before the
15 scene was deemed safe. *See id.*

16 Finally, there is no evidence that it would have made a difference if the officers had
17 summoned medical aid sooner. There is evidence that Wilson did not die instantly because
18 officers saw him moving for a while and he had time to write the word "Sorry" in blood on the
19 navigation system. But by the time the officers approached Wilson, he was already deceased.
20 Thus, even if the officers had immediately called for medical care and medical personnel had
21 immediately arrived, Wilson would have been deceased before any medical personnel could
22 have safely approached him to render aid. *See id.* (stating that officers were not liable for failure
23 to perform CPR because there was "no evidence that CPR or first aid would have been

1 beneficial”). Accordingly, the defendants are entitled to summary judgment on the plaintiffs’
2 Fourth and Fourteenth Amendment claims for denial of medical care.

3 3. Monell Claim

4 The plaintiffs also bring a claim under *Monell v. New York City Department of Social*
5 *Services*, 436 U.S. 658 (1978), against LVMPD and Lombardo. This claim is based on
6 allegations that Lombardo and LVMPD encourage and ratify excessive force shootings;
7 inadequately supervise, train, and discipline LVMPD officers; and maintain inadequate
8 procedures regarding intentional officer misconduct and excessive use of deadly force. The
9 defendants argue that this claim fails because no constitutional rights were violated and because
10 the plaintiffs offer no evidence to support their claim. The plaintiffs did not respond.

11 Because there is no constitutional violation, LVMPD and Sheriff Lombardo cannot be
12 liable under *Monell*. *Lockett v. Cnty. of Los Angeles*, 977 F.3d 737, 741 (9th Cir. 2020) (stating
13 that *Monell* claims “require a plaintiff to show an underlying constitutional violation”). And
14 because the plaintiffs did not respond to the defendants’ arguments regarding this claim, they
15 have not pointed to evidence supporting *Monell* liability under any theory. *See Trevino v. Gates*,
16 99 F.3d 911, 918 (9th Cir. 1996), *holding modified on other grounds*, *Navarro v. Block*, 250 F.3d
17 729 (9th Cir. 2001). For example, the plaintiffs present no evidence outside of this incident to
18 support a claim that an official policy or custom was the moving force behind the officers’ acts
19 or omissions. *See id.* (“Liability for improper custom may not be predicated on isolated or
20 sporadic incidents; it must be founded upon practices of sufficient duration, frequency and
21 consistency that the conduct has become a traditional method of carrying out policy.”). I
22 therefore grant summary judgment on this claim for LVMPD and Lombardo.

1 **B. State Law Claims**

2 1. Assault and Battery

3 The plaintiffs assert state law claims for assault and battery against Gowens, Swartz,
4 Squeo, and Lindberg. They contend that these defendants used more force than was reasonably
5 necessary and should be liable for battery to that extent. Because no genuine dispute remains
6 that the officers' conduct was reasonable under the Fourth Amendment, the defendants are
7 entitled to summary judgment on the plaintiffs' assault and battery claims. *See Gordon v. Las*
8 *Vegas Metro. Police Dep't*, 2:13-CV-01095-GMN, 2015 WL 5344549, at *11 (D. Nev. Sept. 14,
9 2015) ("The standard for battery by a police officer under Nevada law is the same as under a
10 § 1983 claim."); *Ramirez v. City of Reno*, 925 F. Supp. 681, 691 (D. Nev. 1996) (same).
11 Accordingly, I grant summary judgment for defendants Gowens, Squeo, Swartz, and Lindberg
12 on these claims.

13 2. Negligence, Negligent Infliction of Emotional Distress, and Wrongful Death

14 The plaintiffs assert state law claims for negligence, negligent infliction of emotional
15 distress, and wrongful death against all defendants. The defendants argue that the negligence
16 claims fail because they did not breach a duty by shooting and killing Wilson, the plaintiffs have
17 not presented expert testimony to establish the standard of care for police practices leading up to
18 the shooting, and their decisions regarding use of force are entitled to discretionary immunity.
19 The plaintiffs respond that discretionary immunity does not apply, the reasonableness standard
20 under negligence is distinct from the Fourth Amendment analysis, and the officers can testify as
21 to the standard of care which, along with LVMPD's written policies, is sufficient to establish the
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1 standard of care and breach of that standard without an expert. In reply, the defendants argue the
2 plaintiffs have no evidence that the “ram” caused Wilson any injuries.

3 For a negligence claim to succeed, a plaintiff must show: (1) the defendant owed a duty
4 of care to the plaintiff; (2) the defendant breached that duty; (3) the breach was the legal cause of
5 the plaintiff’s injury; and (4) the plaintiff suffered damages. *Scialabba v. Brandise Constr. Co.*,
6 *Inc.*, 921 P.2d 928, 930 (Nev. 1996). “Whether a defendant owes a plaintiff a duty of care is a
7 question of law.” *Id.* Whether the defendant breached a duty and whether any breach caused the
8 plaintiff’s damages generally are questions of fact for the jury. *Frances v. Plaza Pac. Equities*,
9 847 P.2d 722, 724 (Nev. 1993).

10 *a. The Shooting*

11 The plaintiffs have failed to present evidence that the defendants breached a duty by
12 shooting Wilson. As discussed above, the officers used reasonable force under the
13 circumstances in shooting Wilson. Consequently, the defendants’ actions in shooting Wilson
14 were not wrongful and did not breach a duty owed to Wilson. *See Neal-Lomax v. Las Vegas*
15 *Metro. Police Dep’t*, 574 F. Supp. 2d 1170, 1192-93 (D. Nev. 2008), *aff’d*, 371 Fed. App’x 752
16 (9th Cir. 2010). I therefore grant summary judgment in favor of all defendants on the negligence
17 claims based on the shooting. Because the shooting is what caused Wilson’s death, the wrongful
18 death claim fails as a matter of law. *See* NRS § 41.085(2) (providing a cause of action “[w]hen
19 the death of any person . . . is caused by the wrongful act or neglect of another”); ECF No. 27-3
20 at 5 (autopsy report concluding Wilson “died of multiple gunshot wounds”).

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1 *b. The “Ramming”*

2 The plaintiffs argue in their response that the negligent act was Squeo “ramming”
3 Wilson. Because the plaintiffs identify only Squeo as having engaged in this act, I grant
4 summary judgment in favor of the other defendants on this claim.

5 Squeo’s decision to “ram” Wilson is not entitled to discretionary immunity. Nevada has
6 generally waived its sovereign immunity under Nevada Revised Statutes (NRS) § 41.031. One
7 exception to that waiver is discretionary function immunity. *See* NRS § 41.032(2). Nevada’s
8 discretionary function immunity statute provides that “no action may be brought” against a
9 public officer “[b]ased upon the exercise or performance or the failure to exercise or perform a
10 discretionary function or duty . . . whether or not the discretion involved is abused.” NRS
11 § 41.032(2). The Supreme Court of Nevada has “adopted the *Berkovitz-Gaubert* test enunciated
12 by the United States Supreme Court for determining whether acts fall within the scope of
13 discretionary-act immunity.” *Paulos v. FCHI, LLC*, 456 P.3d 589, 595 (Nev. 2020) (en banc)
14 (citing *Martinez v. Maruszczak*, 168 P.3d 720 (Nev. 2007) (en banc)). To give rise to
15 discretionary act immunity, the conduct at issue “must (1) involve an element of individual
16 judgment or choice and (2) be based on considerations of social, economic, or political policy.”
17 *Id.* (quotation omitted).

18 The Supreme Court of Nevada recently held that an officer’s “on-the-spot decision to use
19 lethal force” is not “susceptible to policy analysis for purposes” of the second prong. *Estate of*
20 *Brenes v. Las Vegas Metro. Police Dep’t*, No. 78272, 468 P.3d 368, 2020 WL 4284335, at *1
21 (Nev. July 24, 2020) (internal quotation marks omitted). Consequently, the officer’s decision to
22 use deadly force in that case was “not shielded by discretionary-function immunity.” *Id.*
23

1 Likewise, Squeo's on-the-spot decision to make contact with Wilson's car was not based
2 on considerations of social, economic, or political policy. He therefore is not entitled to
3 discretionary function immunity for that action. *See Cepero v. Gillespie*, No. 2:11-cv-01421-
4 JAD-NJK, 2020 WL 6173503, at *11 (D. Nev. Oct. 21, 2020) (holding that officers' "in-the-
5 moment" decisions regarding the "appropriate level of force to use" were not shielded by
6 discretionary immunity); *Plank v. Las Vegas Metro. Police Dep't*, No. 2:12-cv-02205-JCM-
7 PAL, 2016 WL 1048892, at *8 (D. Nev. Mar. 14, 2016) ("Since *Martinez*, federal courts
8 applying Nevada law have been reluctant to grant discretionary immunity to police officers
9 accused of using excessive force.").

10 The parties next dispute whether the plaintiffs must present expert testimony on the
11 relevant standard of care. "Generally, where an alleged harm involves conduct that is not within
12 the common knowledge of laypersons, the applicable standard of care must be determined by
13 expert testimony." *Boesiger v. Desert Appraisals, LLC*, 444 P.3d 436, 439 (Nev. 2019)
14 (quotation omitted). Although driving is generally within the common knowledge of laypersons,
15 police techniques and tactics during a high-speed car chase are not. Topics such as how to
16 conduct a police pursuit, when and how to use a PIT maneuver or other contacts with vehicles,
17 and under what circumstances contact is appropriate in the context of a police pursuit of a fleeing
18 felon are decisions that involve professional judgment under uncertain and evolving
19 circumstances. *See Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp.*, 642 P.2d 1086,
20 1087 (Nev. 1982) (stating that expert testimony is not required where the conduct in question
21 does not involve "esoteric knowledge or uncertainty that calls for the professional's judgment");
22 *Bao Xuyen Le v. Reverend Dr. Martin Luther King, Jr. Cnty.*, No. C18-55 TSZ, 2019 WL
23 2289681, at *1 (W.D. Wash. May 29, 2019) (allowing experts to testify about "law enforcement

1 practices, tactics, techniques, and training, which are subjects beyond the common knowledge of
2 the average juror”). Consequently, expert testimony is required to establish the standard of care.

3 The plaintiffs contend that they may rely on LVMPD’s policies and the officers’
4 testimony to establish the standard of care and Squeo’s breach of that standard. The parties have
5 not adequately addressed this issue for me to determine whether the officers’ testimony and
6 LVMPD’s policy suffice. Additionally, the defendants raised causation for the first time in their
7 reply brief. The plaintiffs thus have not had a fair opportunity to respond to that argument. I
8 therefore deny the defendants’ summary judgment motion on the plaintiffs’ negligence and
9 negligent infliction of emotional distress claims against Squeo. But because these claims might
10 be decided as a matter of law without the need for a trial, I will extend the dispositive motion
11 deadline for the parties to file new motions for summary judgment on these claims only.

12 3. Negligent Supervision and Training

13 The plaintiffs assert a claim for negligent hiring, supervision, and training against
14 LVMPD and Lombardo. The defendants argue that they are entitled to discretionary function
15 immunity. The plaintiffs do not respond.

16 Decisions about whether to hire and how to properly train and supervise an officer
17 involve individual judgment on the part of the policymakers or supervisors and are based on
18 considerations of social, economic, or political policy. *Paulos*, 456 P.3d at 596 (holding that
19 LVMPD’s hiring and training decisions are subject to discretionary act immunity). Accordingly,
20 LVMPD and Lombardo are entitled to discretionary function immunity. I therefore grant the
21 defendants summary judgment on the plaintiffs’ negligent supervision and training claim.

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1 **III. CONCLUSION**

2 I THEREFORE ORDER that the defendants' motion for summary judgment (**ECF No.**
3 **22) is GRANTED in part.** The motion is granted as to all defendants on all claims except the
4 plaintiffs' claims of negligence and negligent infliction of emotional distress against defendant
5 John Squeo.

6 I FURTHER ORDER that the dispositive motion deadline is extended to December 14,
7 2020 for the remaining claims against defendant John Squeo only.

8 DATED this 24th day of November, 2020.



ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE